

DRAW 69-1-89-031

DEPARTMENT OF THE ARMY
LEASE FOR FISH AND WILDLIFE MANAGEMENT PURPOSES ASSG: 3 FEB 89
GREENBOTTOM MITIGATION SITE
GALLIPOLIS LOCKS AND DAM
CABELL AND MASON COUNTIES, WEST VIRGINIA

THE SECRETARY OF THE ARMY, under authority of 16 U.S.C. 460d, hereby grants to the STATE OF WEST VIRGINIA DEPARTMENT OF NATURAL RESOURCES, hereinafter referred to as the lessee, a lease for a period of twenty-five (25) years commencing on February 20, 1989, and ending on February 19, 2014, to use and occupy approximately 660 acres of land and water areas under the primary jurisdiction of the Department of Army in the Gallipolis Locks and Dam Project, known as the Greenbottom Mitigation Site, as shown in red on Exhibit A attached hereto and made a part hereof, for fish and wildlife management purposes.

THIS LEASE is granted subject to the following conditions:

1. That the lessee, in the exercise of the privileges hereby granted, shall conform to such rules and regulations as may be prescribed by the Secretary of the Army and the Chief of Engineers to govern the public use of the area and the provisions of Section 4 of the Act of Congress approved 22 December 1944, as amended (76 Stat. 1195; 16 U.S.C. 460d) and 16 U.S.C. § 663.

2. That the lessee may construct upon said land such buildings, improvements, facilities, accommodations, fences, signs and other structures as may be necessary for the purposes of this lease, and may plant seeds, shrubs and trees, provided that all such structures shall be constructed and the landscaping accomplished in accordance with plans approved by the District Engineer, U. S. Army Corps of Engineers, in charge of the administration of the property.

3. That the lessee shall administer and maintain the said property, for the purposes of this lease, in accordance with the master plan for the said project area and with an annual management plan to be mutually agreed upon between the lessee and the said District Engineer, which may be amended from time to time as may be necessary. Such annual management plan shall include, but is not limited to, the following:

a. Plans for management and development activities to be undertaken by the lessee or jointly by the Corps of Engineers and the lessee. This should include specific information about: (1) the activities to be performed and where; (2) the areas designated for various species of fish and wildlife propagation; (3) the areas to be outgranted by agricultural

agreement or sharecropped; (4) variety and scope of crops to be planted, as well as any rotations; (5) the areas proposed for wildlife cover and the type of cover to be cultivated, if any; and (6) all structures and improvements proposed.

b. Budget of the lessee for carrying out the management and development activities. This should include estimates of revenues to be generated annually and where these funds will be expended.

c. Personnel to be used in the management of the area.

d. Plans for supervising, patrolling and policing the leased areas, including the water areas, with special emphasis on public safety.

e. Reasonable provisions for public interpretation of the prehistory and history of the area.

4. That the lessee shall protect the property from fire, vandalism and soil erosion, and may make and enforce such rules and regulations as are necessary, and within its legal authority, in exercising the privileges granted in this lease, provided that such rules and regulations are not inconsistent with those prescribed by the Secretary of the Army to govern the public use of the area. The lessee shall coordinate its fire protection with other governmental agencies.

5. a. That the lessee, in exercising its governmental or proprietary functions, may plant or harvest crops, either directly, by service contract, by sharecrop agreements with local farmers, or by agricultural agreements to provide food and/or habitat for wildlife and for the development and conservation of land, fish and wildlife, forests, and other natural resources. Where feasible, contracts and agreements with third parties shall be by competitive bid procedures.

b. The proceeds derived from the sale of crops and timber required to be cleared may be used in furtherance of the above uses at this project in accordance with the Approved management plan. The balance of the proceeds not so used shall be paid to the United States of America at the expiration of each five-year period. The first five-year period is to begin on the date of the execution of this lease by the Government. Payment of direct expenses is authorized for planning and development of optimum wildlife habitat including planting of wildlife food plots, necessary timber clearing, erosion control or habitat

improvements such as shelter, restocking of fish and wildlife, and protection of endangered species. Payment of lessee's employees who are directly engaged in such activities at the project is also authorized. However, proceeds will not be used for the payment of general administrative expenses.

c. Proceeds derived from the sale of fishing and hunting licenses are not subject to this condition.

d. The lessee will establish and maintain adequate records and accounts and render annual statements of receipts and expenditures in furtherance of its management program, and as otherwise may be reasonably required by the said District Engineer. The District Engineer shall have the right to perform audits of the lessee's records and accounts.

6. That the lessee may take, trap, remove, stock or otherwise control all forms of fish and wildlife within the said area, and may place therein such additional forms of fish and wildlife as it may desire from time to time, and shall have the right to open or close the area, or any parts thereof from time to time, to fishing, hunting or trapping, provided that the closing of any area to such use for fishing, hunting or trapping shall be consistent with the state laws for the protection of fish and wildlife; also, the lessee shall enforce the fish and game laws and such orders and regulations as may be issued by the West Virginia Department of Natural Resources, which laws, orders and regulations are consistent with its state-wide program.

7. That this lease is subject to all existing and future easements, leases, licenses and permits heretofore granted, or to be hereafter granted, by the United States concerning said lands; provided, however, that upon appropriate notification by the lessee to said District Engineer, the United States, insofar as may be consistent with other uses and purposes of the project, will not enter into any new easements, leases, licenses or permits, or renewals thereof, which will, in the opinion of the District Engineer, adversely affect the current operations of the lessee under the provisions of the lease, or which will conflict with the definitely scheduled program of the lessee, for the expansion of its activities under the provisions of this lease.

8. That the lessee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national origin or religion in the conduct of operations on the leased premises.

9. That no cuts or fills along the shoreline shall be made by the lessee without the prior approval of the said District Engineer.

10. That, within the limits of their respective legal powers, the parties to the lease shall protect the project against pollution of its water. The lessee shall comply promptly with any regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency and/or a state, interstate or local governmental water pollution control agency having jurisdiction to abate or prevent water pollution. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency or by a state, interstate or local governmental agency are hereby made a condition of this lease.

11. That ingress to and egress from the project shall be afforded the lessee over existing access roads, such interior roads as may be constructed, and at such additional places over Government-owned land as may be approved by said District Engineer. The lessee shall provide appropriate markings at its own expense.

12. That the right is hereby expressly reserved to the United States, its officers, agents and employees, to enter upon the said land and water areas, at any time and for any purpose necessary or convenient in connection with river and harbor and flood control work, and to remove therefrom timber or other material required or necessary for such work; to flood said premises when necessary, and/or to make any other use of said land as may be necessary in connection with public navigation and flood control and the lessee shall have no claim for damages of any character on account thereof against the United States or any agent, officer or employee thereof.

13. That any property of the United States damaged or destroyed by the lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the lessee to the satisfaction of the said District Engineer.

14. That this lease may be relinquished by the lessee at any time by giving to the Secretary of the Army, through the said District Engineer, at least six months notice in writing.

15. That this lease may be revoked by the Secretary of the Army in the event the lessee violates any of the terms and conditions of this lease and continues and persists therein for a period of thirty (30) days after notice thereof, in writing, by the said District Engineer.

16. That on or before the date of expiration of this lease or its relinquishment by the lessee, the lessee shall vacate the said Government premises, remove all property of the lessee therefrom, and restore the premises to a condition satisfactory to the said District Engineer. If, however, this lease is revoked, the lessee shall vacate the premises, remove said property therefrom, and restore the premises as aforesaid within such time as the Secretary of the Army may designate. In either event, if the lessee shall fail or neglect to remove said property and so restore the premises, then said property shall become the property of the United States, without compensation therefor, and no claim for damages against the United States, or its officers or agents, shall be created by or made on account thereof.

17. That the lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, ~~archeological~~, architectural or other cultural artifacts, relics, vestiges or remains. In the event such items are discovered on the premises, the lessee shall immediately notify the District Engineer, Huntington District, and the site and the material shall be protected by the lessee from further disturbance until a professional examination of them can be made or until clearance to proceed is authorized by the District Engineer.

18. That the lessee shall comply with all applicable Federal laws, and ordinances and regulations of the state, county and municipality wherein the premises are located.

19. That the lessee furnishes as part of this instrument an assurance (Exhibit B attached hereto and made a part hereof) that it will comply with the Age Discrimination Act of 1975 (42 U.S.C. 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); and Department of Defense Directive 5500.11 issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations.

20. This lease is being issued prior to the preparation of a general plan for fish and wildlife management activities as contemplated by the Fish and Wildlife Coordination Act of 1934, as amended (16 U.S.C. § 663). This lease will be amended after a general plan for fish and wildlife management has been developed and approved to make reference to the plan and to cite the Fish and Wildlife Coordination Act of 1934, as amended, as additional authority for execution of this lease.

21. It is the intention of the United States to acquire approximately another 174 acres of land to be included in the Greenbottom Mitigation Site. Upon final acquisition of all the land to be acquired, the parties shall execute an amendment to this agreement which shall lease the newly acquired tracts under the same terms and conditions as set out herein. The lessee shall have no right, claim or cause of action against the United States for failing to acquire or lease any or all of the land intended to be acquired.

22. That the United States, its officers, agents, employees and its contractors shall have the right to enter upon the Greenbottom Mitigation site to plan and construct facilities on said premises as proposed in the master plan and any revisions thereof.

23. That the lessee shall preserve the structure known as the General Albert Jenkins House. Any restoration or rehabilitation efforts shall be coordinated with appropriate State and Federal Historic Preservation agencies and be in compliance with the United States Secretary of the Interior's Standards for Rehabilitation and Guidelines for the Rehabilitation of Historic Buildings, attached hereto and designated as Exhibit C.

IN WITNESS WHEREOF, I have hereunto set my hand this day of FEBRUARY 3, 1989, by authority of the Secretary of the Army.

Cberyl A. Terrell

Spa A. Bodmer

Donald E. Thompson

DONALD E. THOMPSON
Chief, Real Estate Division
Huntington District Corps of
Engineers

The above instrument, together with the provisions and conditions thereof, is hereby accepted this 30th day of January, 1989.

STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES

By J. Edward Hamrick
Its Director

APPROVED AS TO FORM PRIOR TO
ACKNOWLEDGEMENT THEREOF, THIS

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31 day of Jan, 1989.

CHARLIE BROWN
ATTORNEY GENERAL

BY Buck Hunter
ASSISTANT ATTORNEY GENERAL

**ASSURANCE OF COMPLIANCE WITH THE AGE DISCRIMINATION ACT OF 1975;
WITH THE REHABILITATION ACT OF 1973;
WITH TITLE VI OF THE CIVIL RIGHT ACT OF 1964; AND,
WITH DEPARTMENT OF DEFENSE DIRECTIVE 5500.11**

The State of West Virginia Department of Natural Resources,
(hereinafter called the lessee) HEREBY AGREES THAT it will comply
with the Age Discrimination Act of 1975 (42 U.S.C. § 6102); with
the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794);
with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §
2000d), and the Department of Defense Directive 5500.11 (32
C.F.R. § 300), to the end that, in accordance with the above
cited Acts and Directive, no person in the United States shall,
on the ground of race, color, age, sex, handicap, or national
origin, be excluded from participation in, be denied the benefits
of, or be otherwise subjected to discrimination under any program
or activity for which the lessee receives Federal financial
assistance from the Department of the Army and HEREBY GIVES
ASSURANCE THAT it will immediately take any measure necessary to
effectuate this agreement.

EXHIBIT B

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the lessee by the Department of the Army, this assurance shall obligate the lessee, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for ^{FED} another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the lessee for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the lessee for the period during which the Federal financial assistance is extended to it by the Department of the Army.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the lessee by the Department, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The lessee recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that

the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the lessee, its successors, transferees, and assignees, and the person or persons whose signature appear below are authorized to sign this assurance on behalf of the lessee.

DATED this 30th day of January, 19 89.

THE STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES

BY J. Edward Hamrick III
ITS Director

**The Secretary of the Interior's
Standards for Rehabilitation
and Guidelines for
Rehabilitating Historic Buildings (Revised 1983)**

**U.S. Department of the Interior
National Park Service
Preservation Assistance Division
Washington, D.C.**

EXHIBIT C